



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5221-99

17 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 28 May 1969 at age 18. The record shows that you reported to your unit in Vietnam on 28 January 1970 and served there until 3 September 1970. While in Vietnam, you received nonjudicial punishment for four instances of disobedience. On 3 March 1971 you received another nonjudicial punishment for an unauthorized absence of about two days.

Subsequently, you were an unauthorized absentee from 28 May to 9 June 1971. On 14 June 1971 you began another period of unauthorized absence which lasted until you surrendered on 27 December 1971. Your military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the two foregoing periods of unauthorized absence totaling about 207 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 23 February 1972 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at

hard labor. You were discharged on 1 March 1972.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, and service in Vietnam. The Board also considered your contention that you only became an unauthorized absentee because you were denied leave following the death of your mother-in-law. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. There is no evidence in the record concerning the death of your mother-in-law and you have submitted none. However, even if you were denied leave following her death, the Board did not believe that it was sufficient to excuse or mitigate multiple periods of unauthorized absence, the longest of which was about 196 days. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director